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Anita PATEL

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Anita PATEL,) Case No.: C 07 2919 SI
Petitioner,)
v.)
Alberto GONZALES, in his official capacity,) Immigration Case,
Attorney General, United States Department of) Administrative Procedure Act Case
Justice;)
Michael CHERTOFF, in his official capacity,) Agency No.: A096 542 186
Secretary, United States Department of)
Homeland Security;)
Emilio GONZALEZ, in his official capacity,)
Director, United States Citizenship and)
Immigration Services, United States)
Department of Homeland Security; and)
David STILL, in his official capacity, District)
Director, United States Citizenship and)
Immigration Services, United States)
Department of Homeland Security, San)
Francisco, California,)
Respondents.)

INTRODUCTION

1. This is an action for declaratory and mandatory relief, authorized by 28 U.S.C. § 1361, the Mandamus Act; 28 U.S.C. §2201, the Declaratory Judgment Act; and 5 U.S.C. § 702, the Administrative Procedure Act (“APA”). Petitioner Anita Patel files this action to compel adjudication of her pending I-485 Application to Register Permanent Resident or Adjust Status (“I-485 Application”) as she endeavors to earn lawful permanent residency in the United States.

2. This action seeks to compel the United States Department of Homeland Security (“DHS”), United States Citizenship and Immigration Services (“CIS”) to adjudicate Petitioner Anita Patel’s Form I-485 Application that was filed in March, 2005, and which has been pending for over 2 years, but has not yet been adjudicated. This application is based on an approved immediate relative immigrant petition, Form I-130, which was filed by Petitioner Patel’s United States citizen husband.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, the Mandamus Act; 28 U.S.C. § 2201, the Declaratory Judgment Act; 28 U.S.C. § 1331, general federal question jurisdiction; and 5 U.S.C. § 702, the Administrative Procedure Act (“APA”).

4. Venue is properly with this Court pursuant to 28 U.S.C. § 1391(e) because this is a civil action in which the Respondents are employees or officers of the United States, acting in their official capacities; because a substantial part of the events or omissions giving rise to the claim occurred in San Francisco, California, in the Northern District of California; and because Petitioner resides in San Mateo County, in the Northern District of California and there is no real property involved in this action.

5. Intradistrict Assignment: This action should be assigned to the San Francisco Division because a substantial part of the events and omissions giving rise to this claim occurred within the jurisdiction of that division. See Local Rules 3-2(c), (d).

PARTIES

6. Petitioner Anita PATEL is a citizen and national of the United Kingdom, born in 1965. Petitioner resides in Redwood City, California with her husband, Anand Paul Singh Judge, who was born in the United States, and with the couple's daughter aged 1 ½ years, who was also born in the United States.

7. Respondent Alberto GONZALES is sued in his official capacity as the Attorney General of the United States Department of Justice. In this capacity he has responsibility for providing access to criminal history record information pursuant to 8 U.S.C. § 1105(b), 8 U.S.C. § 1103(g).

8. Respondent Michael CHERTOFF is sued in his official capacity as the Secretary of the United States Department of Homeland Security (“DHS”). In this capacity he has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8 U.S.C. § 1103.

9. Respondent Emilio GONZALEZ is the Director of the United States Citizenship and Immigration Services (“CIS”) and is sued herein in his official capacity. See 8 C.F.R. §§ 2.1, 103.1.

10. Respondent David STILL is the District Director of the San Francisco District Office of CIS and is sued herein in his official capacity. See *id.*

FACTUAL ALLEGATIONS

11. Petitioner Anita Patel arrived in the United States as a visitor in 1994.

12. On May 3, 2002, Petitioner Patel married Anand Paul Singh Judge in California. Mr. Judge was born in California and as a result is a United States citizen.

13. In October, 2005, Petitioner Patel and her husband gave birth to their first child, a daughter born here in the United States.

14. On or about March 7, 2005, Petitioner Patel filed Form I-485 Application to Register Permanent Resident or Adjust Status.

1 15. On or about March 7, 2005, Petitioner Patel filed Form G-325A Biographic
2 Information in furtherance of her quest for lawful permanent residency.

3 16. On or about March 7, 2005, Petitioner Patel's husband filed Form G-325A
4 Biographic Information in furtherance of Petitioner Patel's quest for lawful permanent residency.

5 17. On or about March 7, 2005, Petitioner Patel filed Form I-765 Application for
6 Employment Authorization.

7 18. On or about May 23, 2005, Petitioner Patel's husband filed an immediate family visa
8 application, Form I-130 Petition for Alien Relative.

9 19. The I-130 petition filed on behalf of Petitioner Patel was approved by CIS on
10 December 14, 2005.

11 20. On or about June 3, 2005, CIS sent Petitioner Patel a Request for Applicant to
12 Appear for Initial Interview in furtherance of her I-485 Application. Petitioner Patel's priority
13 date was set to June 3, 2005, and her interview date was scheduled for December 13, 2005.

14 21. Both Petitioner Patel and her husband attended and completed the scheduled
15 interview on December 13, 2005.

16 22. On or about June 20, 2005, CIS sent Petitioner Patel a request to have biometrics
17 taken in furtherance of her I-765 Application for Employment Authorization.

18 23. On or about June 20, 2005, CIS sent Petitioner Patel a request to have fingerprints
19 and biometrics taken in furtherance of her I-485 Application.

20 24. Petitioner Patel fulfilled the requests from CIS and has provided fingerprint and
21 biometric information to CIS.

22 25. On or about August 22, 2006, Petitioner Patel's former counsel inquired into the
23 status of Petitioner Patel's I-485 Application. On or about August 25, 2006, a response to that
24 inquiry indicated that CIS was awaiting a security check on Petitioner Patel's case from the FBI,
25 and that CIS would be unable to adjudicate her petition until the background check had
concluded. CIS further stated that on average cases are assigned to a CIS officer within one
week of clearance for adjudication.

1 26. On or about September 11, 2006, Petitioner Patel called CIS to request status on her
2 I-485 Application, receipt number MSC-05-259-18879. In a letter of response dated September
3 11, 2006, CIS said that Petitioner Patel's application was not yet ready for decision because the
4 background investigation had not yet been completed. The letter further instructed that if
5 Petitioner Patel did not hear from CIS within 6 months to contact the customer service phone
6 number.

7 27. On or about January 22, 2007, Petitioner Patel again called CIS to request status on
8 her I-485 Application, receipt number MSC-05-259-18879. In a letter of response dated January
9 23, 2007, CIS used identical text to the earlier September 11, 2006 letter of response to tell
10 Petitioner Patel that her case was not yet ready for decision because the background investigation
11 had not yet been completed. The letter identically instructed that if Petitioner Patel did not hear
12 from CIS within 6 months to contact the customer service phone number.

13 28. On or about April 30, 2007, Petitioner Anita Patel and her husband attended an
14 InfoPass appointment requested by Petitioner in San Francisco to request a status update on, and
15 hopefully expedite adjudication of, her I-485 Application in person. CIS informed Petitioner
16 Patel and her husband that CIS was still awaiting the results of a name check from the FBI, and
17 that there was nothing CIS could do in furtherance of adjudication of Petitioner's I-485
18 Application at that time.

19 29. Petitioner Anita Patel has complied with all requests for information, attended all
20 requested appointments, and paid all fees associated with her I-485 Application and all other
21 forms submitted in her quest to become a lawful permanent resident in the United States.

22 30. As of May 18, 2007, the CIS website showed that the San Francisco district office
23 was processing I-485 applications with receipt notices of November 11, 2006. Petitioner Patel's
24 application was filed in March, 2005, more than 19 months prior to the applications currently
25 being processed.

26 31. On or about May 10, 2007, Petitioner Patel, though counsel, submitted a letter to the
27 United States District Attorney's Office to notify them of these delays, and to request assistance
28

1 in obtaining prompt adjudication of Petitioner Patel's I-485 Application. As of June 4, 2007,
 2 neither Petitioner Patel, nor her counsel, had received any response.

3

4 **CAUSE OF ACTION**

5 **PETITIONER ANITA PATEL IS ENTITLED TO ADJUDICATION OF HER I-
 6 485 APPLICATION, AND HAS BEEN DENIED THIS ADJUDICATION
 7 THROUGH RESPONDENTS' VIOLATIONS OF THE IMMIGRATION AND
 8 NATIONALITY ACT AND ADMINISTRATIVE PROCEDURES ACT**

9 32. Paragraphs 1 through 31 are incorporated herein.

10 33. Petitioner Anita Patel is the subject of an approved I-130 visa petition filed by her
 11 United States citizen spouse. Pursuant to 8 U.S.C. § 1151(b)(2), immigrant visas are
 12 immediately available to the spouses of United States citizens. Petitioner Anita Patel, therefore,
 13 is eligible, pursuant to 8 U.S.C. § 1255(a), for adjustment of status to the status of lawful
 14 permanent resident.

15 34. Petitioner Anita Patel has been eligible for adjustment of status since 2005, based on
 16 her continued marriage to a United States citizen since 2002. The San Francisco CIS is
 17 processing similar applications filed in October 2006. Petitioner Anita Patel's application is
 18 clearly unreasonably delayed.

19 35. Mandamus is an appropriate remedy whenever a party demonstrates a clear right to
 20 have an action performed by a governmental official who refuses to act. Donovan v. United
21 States, 580 F.2d 1203, 1203 (3d Cir. 1978). Respondents have refused to adjudicate Petitioner
 22 Anita Patel's marriage-based application for adjustment of status. Respondents have a duty to
 23 act upon the application and have failed to do so in a reasonable time or manner. Patel v. Reno,
 24 134 F.3d 939 (9th Cir. 1997). Respondents have thus violated the Immigration and Nationality
 25 Act.

26 36. In addition, Respondents have violated the Administrative Procedures Act ("APA")
 27 which provides that within a reasonable time, each agency shall proceed to conclude a matter
 28 presented to it. 5 U.S.C. § 555(b). APA further provides that a reviewing court shall compel
 agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

37. Petitioner Anita Patel has exhausted all other available remedies. See e.g. Singh v. Still, 470 F. Supp 2d 1064 (N.D. Cal. 2007). She has “no other adequate means to attain the relief [s]he desires.” Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980). Her right to issuance of the writ of mandamus is therefore “clear and indisputable” Id.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Anita Patel prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
 - (2) Order that Respondents adjudicate Petitioner Anita Patel's application for permanent residency;
 - (3) Award reasonable costs and attorney's fees; and
 - (4) Grant such further relief as the Court deems just and proper.

Dated this 4th day of June, 2007

/s/ Michael Craig Cox

Michael Craig Cox

Attorney for Petitioner
Anita Patel